



## Audit finds state needs better IT — now

*New management model won't prevent future problems*

By HILLARY BORRUD  
Capital Bureau

SALEM — Oregon has taken steps over the past year to prevent major information technology project failures

such as Cover Oregon, but the effort remains understaffed and incomplete, according to an audit released Monday.

Auditors at the Secretary of State's Office reviewed a new



JORDAN

project management model developed by Oregon's chief information officer in the wake of the Cover Oregon fiasco. Although the strategy is a positive step, auditors found the CIO's office has taken more than a year to develop the model and still has not finished it. One reason is the agency where the CIO works, the Department of Administrative Services, does not have enough

employees assigned to the project.

Auditors also concluded the new project management strategy would not prevent many of the common problems that arose with state IT projects over the past 10 years.

Michael Jordan, who was chief operating officer for the state and director of DAS until March 5, agreed with most of the findings. Jordan agreed the

chief information officer's office was understaffed, and pointed out in a Feb. 24 written response that the agency had asked for 12 more employees in the next two-year budget starting in July. Without additional employees, Jordan estimated his agency would finish developing the new project management strategy by summer 2017.

However, Jordan took issue with the auditors' recommen-

dation for clear consequences when IT projects fail to meet goals during the development process. Jordan wrote that it also was important to be "supportive and collaborative."

The Governor's Office initially asked for more time so that George Naughton could write "an enhanced response" to the audit after Jordan re-

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## CLEANUP CONFIDENTIAL

### City mum on how sewer ratepayer funds spent

*Suit seeks to identify who's liable for harbor Superfund cleanup*

The city is fighting the release of documents detailing how it has spent about \$50 million in sewer ratepayer funds to help clean up the Portland Harbor Superfund site.

The documents are being sought by attorneys representing ratepayers who question whether the Bureau of Environmental Services, which operates the city's sewer system, is the only Portland bureau potentially liable for the cleanup costs. If not, the lawyers wonder whether some of the BES funds spent to date are essentially loans to those other bureaus — and whether the City Charter authorizes BES to make such loans.

The fight is being waged as part of a long-running lawsuit over City Council-approved spending by BES and the Water Bureau, the city's two utilities. Although the case is not yet over, the judge hearing it has ruled that spending by the two bureaus must be reasonably related to their primary missions. Several previous appropriations by both

bureaus are still being litigated, including the ratepayer funds BES has spent so far on the harbor cleanup process.

"We want to see whether BES is spending ratepayer funds to study or prepare to clean up properties where other bureaus have potential liabilities," says John DiLorenzo, an attorney for the ratepayers.

In February, the City Attorney's Office filed a motion with Multnomah County Circuit Judge Stephen Bushong requesting a stay in further proceedings related to the harbor cleanup spending. The motion, filed by Deputy City Attorney Terence Thatcher, argues Bushong should not involve himself in the cleanup spending issue because the process already is in federal court and is being negotiated between many parties in secret. According to the memo, the U.S. Environmental Protection Agency eventually will determine the liability for each of the parties being investigated for polluting the harbor, including the city.

"The Court should delay review and

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STORY BY  
JIM REDDEN

The Bureau of Environmental Services already has spent more than \$50 million on the process for cleaning up the industrial land in the EPA's Portland Harbor Superfund study area.

TRIBUNE PHOTO: JONATHAN HOUSE

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## Upstarts and amateurs

By STEVE LAW  
The Tribune

When Portland Mayor Charlie Hales and his wife Nancy arrived at a Ramadan celebration in Portland, he was puzzled by the sight of 43 taxis parked outside. Then it hit him: they were driven by

Muslim immigrants who make up a good share of Portland's taxi work force.

As Hales explores ways to let the freewheeling Uber taxi service enter Portland's highly regulated taxi market, the mayor says he's concerned about upending the livelihoods of traditional cab drivers.

"Do we completely pull the rug out from

new transportation mode threatened to topple the existing system.

Exactly 100 years ago, hundreds of Portlanders turned their jalopies into do-it-yourself taxis, trolling for customers at downtown streetcar stops. Dubbed jitney drivers, they delivered people to work in less time than the streetcars, for the same nickel fare.

"Here was a chance for the common man to get into business," says Richard Thompson, a Portlander who authored four history books on local streetcar and rail systems. He was speaking of 1915, but he may as well have been talking about Uber drivers today.

The city's experience with jitneys raised some of the exact same public policy issues raised by Uber and similar companies





# Superfund: Many may be liable for cleanup

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analysis of Portland Harbor expenses until the Portland Harbor process has run its own course and there are official or otherwise binding decisions concerning shares of liability," Thatcher's motion reads.

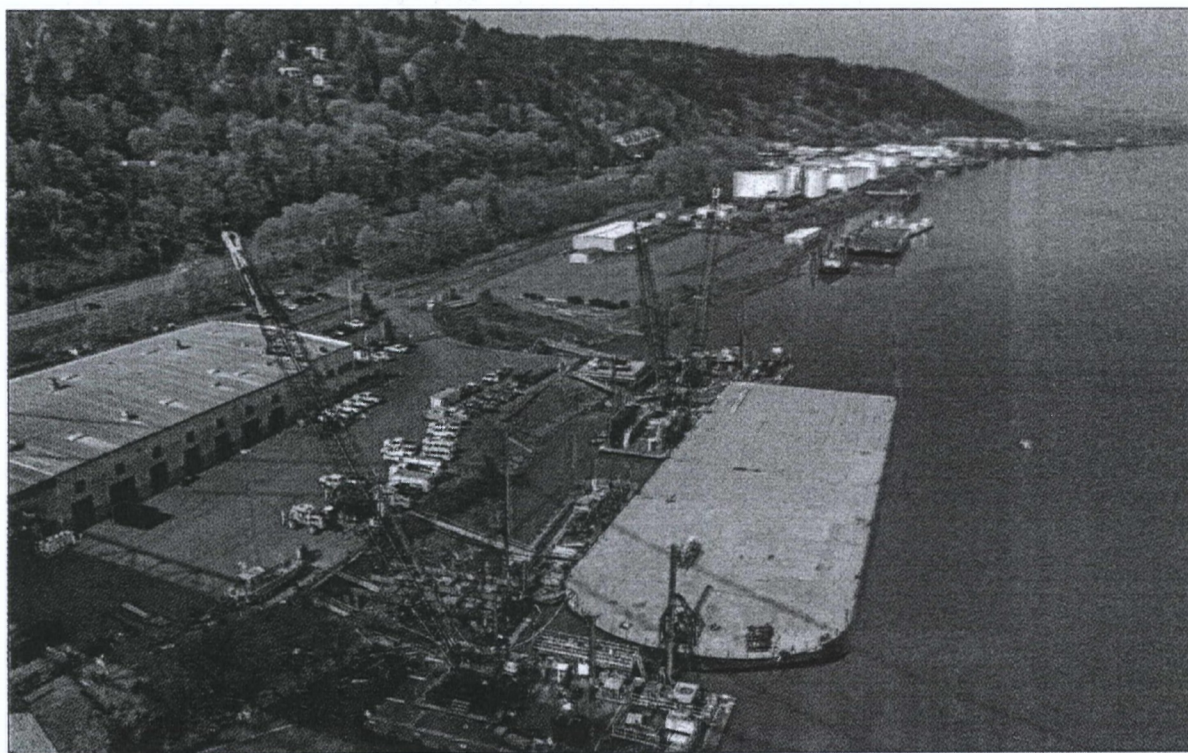
At the same time, the motion concedes that other city bureaus could be liable for some share of the cleanup costs. The City Council eventually will decide how to allocate the costs among the bureaus once they are known, the motion says. Other bureaus mentioned in the motion and an accompanying affidavit include the Portland Bureau of Transportation, the Portland Development Commission, Portland Fire & Rescue, and the Water Bureau.

"The City Council has already announced that it will, itself, review city liability issues and cost responsibility at that time. At that point, once liability issues are better understood, the council will itself decide how financial responsibilities should be shared among the members of the city family. Once that happens, if the plaintiffs still believe that BES has paid more than its share of Superfund expenses, they can ask the court to review the council's decisions," Thatcher's motion reads.

Portland's cost to help clean up the Portland Harbor Superfund site could be substantial. One study says the total cost could range between \$180 million to \$1.8 billion, depending on what approach the EPA finally directs. Because of that, Thatcher argues in his motion that the BES funds spent to date could save sewer ratepayers more money in the future.

## Who's to blame for pollution?

Thatcher's motion was accompanied by an affidavit from him outlining the history of the Portland Harbor Superfund process. Together, they provide insights into the lengthy and complex process that has been largely conducted behind closed doors. Among other things, the documents say that although the city is helping to finance the cleanup process, it has not admitted any



Many of the properties to be cleaned up can be seen along the Willamette River between the St. Johns and Steel bridges.

TRIBUNE PHOTO: JONATHAN HOUSE

liability for polluting the harbor. The city also is trying to figure out how to prevent contaminants from properties away from the harbor from reaching it through the sewer system.

As summarized in the motion, the EPA listed the Portland Harbor on the federal Superfund National Priorities List in December 2000. The listing identified hazardous substances in sediments along approximately six miles of the Willamette River from the St. Johns Bridge to Swan Island. The "study area" was later expanded to stretch from near the confluence of the Willamette and Columbia rivers to just downstream from the Steel Bridge.

The Oregon Department of Environmental Quality also was designated as having a role in the process.

Prior to the listing, the EPA sent letters to the city and around 150 other entities notifying them of their "potential liability" under federal environmental laws. Portland received three letters in January 2000. One named the city as a potentially liable party based on BES's past or present ownership and operation of sewer and stormwater outfalls discharging into the Willamette River. Another letter cited the BES water quality laboratory near the St. Johns Bridge. The third letter identified Portland Fire & Rescue for past operations of a fire-training facility in

Linnton.

In February 2001, the City Council approved a resolution expressing its interest in having the city play a leadership role in determining the cleanup and natural resource restoration strategies for the harbor and river. The resolution designated BES as the lead agency for managing the city's participation in the cleanup process, including negotiating with state and federal agencies, Native American tribes, and the other potentially responsible parties identified by the EPA. The BES also was directed to regularly report to the council on the progress of the cleanup process and the cost implications to the city.

Early in the process, Portland joined a coalition of 13 other potentially responsible parties called the Lower Willamette Group that assumed responsibility for moving site investigations forward through a September 2001 agreement with the EPA and the state of Oregon. According to Thatcher's motion, except for public documents produced as a result of the LWG's work, "its activities and coordination among its members is subject to a strict confidentiality agreement."

In January 2008, Portland and more than 300 other landowners received new letters from the EPA seeking information related to the investigation of harbor contamination. The letters asked

the recipients to identify and give detailed current and historical information concerning any property or outfalls previously or currently owned, leased or operated within the harbor study area. The city responded with documents on properties previously or currently owned by a variety of city agencies not previously identified by the EPA, including the Portland Development Commission.

According to Thatcher's motion, the new EPA letters did not name the recipients as potentially responsible parties. It says that "unless and until there is further analysis of all the material collected about all those properties, no one can know which, if any of them, have ever contributed to the contamination in Portland Harbor."

In 2009, Portland agreed with 73 other potentially responsible parties to participate in a nonjudicial liability allocation process. According to the motion, the goal is to develop a joint settlement offer to the EPA to implement remedies and settle claims for the participating parties' costs. One hundred other parties that declined to join in the allocation process itself nonetheless signed tolling agreements with the mediation parties to put potential claims on hold pending the outcome of the nonjudicial allocation process.

According to Thatcher's motion, this process also is subject to confidentiality agreements.

Also in 2009, the LWG members, including Portland, sued about three dozen companies that refused to join the allocation and refused to enter tolling agreements in federal court. The plaintiffs sought contributions and cost recoveries from the defendants for expenses incurred in responding to the Portland Harbor Superfund listing. Plaintiffs also requested that their case be stayed pending the outcome of the nonjudicial allocation process. In May 2010, U.S. District Judge Michael Mosman stayed the bulk of the proceedings until the EPA issues a Final Record of Decision for the Portland Harbor Superfund site.

## Ratepayers on hook for cleanup

According to the motion, between 2000 and 2014, BES has spent about \$50 million in ratepayer funds on the Superfund process. An additional \$2.6 million also has been spent from city insurance policies. The majority of the money — \$30.6 million — has gone to support the work of the Lower Willamette Group, which has produced a Remedial Investigation and Feasibility Study (RI/FS) for the cleanup that is currently under review by the EPA.

BES also has spent \$11.5 million to identify and investigate sources of contamination that could pollute the harbor through the sewer system after it is cleaned up. Much of

this work on what is called "upland area" contamination has been done with the DEQ.

In his motion, Thatcher says the remaining money has been spent on such things as city staff expenses, other consultant costs, legal fees, and other process expenses. The motion also says the Water Bureau and the Portland Bureau of Transportation have contributed to the process, but it doesn't say how much. And the City Council recently spent \$2.65 million in discretionary general fund dollars on the process, the motion says.

The City Council formally acknowledged that other bureaus, in addition to BES, may be liable for some of the cleanup costs when it approved a resolution on Dec. 19, 2012. The resolution says if the city ultimately is held liable to pay costs and damages for harbor contamination, "the council will then assess how best to assign those costs to its various agencies, bureaus, or funds, taking into account the bases of liability and the council's authority under the charter."

Like Thatcher's motion, the resolution says it is not yet possible to determine the liability of each agency, bureau or fund.

In his response, DiLorenzo argues Bushong does not have to determine liability to decide whether BES has misspent ratepayer funds. Instead, DiLorenzo says Bushong merely needs to direct BES to say how much it has spent studying properties that are or were owned by other city bureaus.

"Certain of the properties that are the subject of those inquiries, such as the city of Portland outfalls, may well relate to the provision of sewer services. Those properties may or may not have contributed to Portland Harbor contamination. Many of the properties, such as the Linnton Oil Fire Training Grounds facility, plainly do not relate to the provision of sewer services. Those properties, likewise, may or may not have contributed to Portland Harbor contamination. The city properly may spend sewer funds on the former category of properties in order to avoid or limit its Superfund liability for sewer activities, but may not utilize sewer funds for the latter category," DiLorenzo argues in his response.

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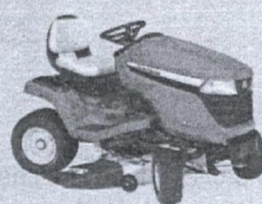
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